

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF OKLAHOMA

3

4 AUDREY MYERS, Personal )  
Representative of the Estate of )  
5 MICHAEL EDWIN SMITH, now deceased, )  
Plaintiffs, )

6 vs. ) No. 17-CV-90-RAW  
7 )

8 BOARD OF COUNTY COMMISSIONERS )  
OF MUSKOGEE COUNTY; ROB FRAZIER, )  
9 SHERIFF OF MUSKOGEE COUNTY, in his )  
Official Capacities; TURN KEY )  
10 HEALTH CLINICS, LLC; and DOES )  
II through XX; )

11 Defendants. )  
12 )



13

14 VIDEOTAPED DEPOSITION OF LOYD BICKEL

15 TAKEN ON BEHALF OF THE PLAINTIFF

16 IN MUSKOGEE, OKLAHOMA

17 ON SEPTEMBER 15, 2018

18

19 REPORTED BY: KAREN B. JOHNSON, CSR

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1 A Correct.

2 Q Neglect; correct?

3 A Correct.

4 Q During this period that -- and we're going  
5 to say the relevant period, which we've already  
6 established is also the period in which Turn Key was  
7 contracted to provide medical services, I'm going to  
8 ask you some questions related to that. During the  
9 relevant period, did the facility still have the  
10 authority to make a decision whether a detainee  
11 received emergency medical treatment? You want me  
12 to reask this question?

13 A Yes.

14 Q What I'm asking you is if the facility  
15 decided that they wanted to call an ambulance, then  
16 there's -- Turn Key wouldn't be able to control  
17 that; correct?

18 A That is correct.

19 Q And during this relevant period, the two  
20 ways that a detainee would be transported to a  
21 hospital when they suffered a serious medical  
22 condition would be, one, an ambulance would be  
23 dispatched; correct?

24 A Correct.

25 Q And that would be to the facility;

1 correct?

2 A Correct.

3 Q Also, the detainee could be transported by  
4 some of a county detention staff to the hospital;  
5 correct?

6 A Correct.

7 MR. ARTUS: And that's for a serious  
8 medical condition?

9 Q (By Mr. Howe) But that could be for a  
10 serious medical condition, couldn't it?

11 A Well, if you're -- if -- serious is -- let  
12 me rephrase that a little bit. Serious, if it's  
13 serious enough, they're going by ambulance, it's not  
14 going to be a deputy taking someone to the hospital.

15 Q Okay. But even if there's a -- maybe  
16 what's not determined is somebody who has a broken  
17 bone and the bone is sticking out of the flesh or  
18 they have fallen down the stairs and they have blood  
19 gushing out of their head or suffering a severe  
20 heart attack, the facility still has the control to  
21 get a detainee emergency medical attention; correct?

22 A Correct.

23 Q You would agree with me that just because  
24 somebody doesn't have those severe traumatic  
25 situations that we discussed, there's nothing that

1 prevents the facility from getting a detainee  
2 emergency medical attention; correct?

3 A Correct.

4 MR. ARTUS: Object; asked and answered.

5 Q (By Mr. Howe) Do you consider a patient  
6 with Stage IV metastatic cancer a patient that  
7 requires more attentive care when it comes to  
8 medical treatment?

9 MS. THOMPSON: Object to form.

10 Q (By Mr. Howe) Let me rephrase this  
11 question. Stage IV metastatic -- rephrase it again.

12 A patient or a -- basically a detainee  
13 also that is confined in the facility that's  
14 suffering from Stage IV metastatic cancer, do you  
15 feel that the facility should know about that?

16 A Correct.

17 Q As a matter of fact, you would want to  
18 know when that situation happens; correct?

19 A Yes, I would.

20 Q Just like when you have a detainee that's  
21 in your facility that has been previously diagnosed  
22 with AIDS; correct?

23 A Correct.

24 Q Or even a detainee that suffers from  
25 congestive heart failure; correct?

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1 Q And there's a section where when detainees  
2 are initially brought in and booked in, until  
3 there's a place to assign them a room, that they all  
4 can stay in a certain detox area; correct?

5 A Correct.

6 Q But also in this detox section there are  
7 individualized rooms where detainees are actually  
8 isolated to their own room; correct?

9 A Correct.

10 Q And detox 115, as far as you know, that is  
11 one of those rooms that is the isolated room; right?

12 A Correct.

13 Q Have you personally been in a detox 115  
14 unit?

15 A I have.

16 Q If I was to say the detox unit 115, that  
17 it actually includes a mat for a detainee to sleep  
18 on, a toilet for a detainee to use, a sink for them  
19 to wash themselves and a button that can be used to  
20 contact the board operator; correct?

21 A Correct.

22 Q According to your policy, isn't it true  
23 that assignment or reassignment of detainees is to  
24 be approved by the facility staff or actually the  
25 facility administrator, that would be you; correct?

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1 answered. He's asked and answered the question like  
2 five times now.

3 Q (By Mr. Howe) Also, while a detainee is  
4 in this unit, there's also the camera; right?

5 A Correct.

6 Q Detox 115. And the purpose of that camera  
7 is to monitor that detainee while they are in that  
8 cell; correct?

9 A There are several cells in there that have  
10 cameras and there's a few that do not, so I couldn't  
11 tell you today whether 115 has a camera or not.

12 Q Well, detox 115 does have a camera.

13 A I haven't seen it, so I don't -- and I  
14 don't recall that, so.

15 Q Sure. The purpose of that camera is to  
16 monitor -- of a camera in a cell is to monitor a  
17 detainee while they're in isolation; correct?

18 A Correct.

19 Q Especially if they're -- they're in there  
20 for safety reasons; correct?

21 A Correct.

22 Q And, also, if they're in there because  
23 they're for medical observation; correct?

24 A Correct.

25 Q Because what you want to do is you want to

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1 make sure that when that detainee is isolated,  
2 there's no one else around in that cell with them,  
3 that you're able to see that that detainee is  
4 actually safe; correct?

5 A Correct.

6 Q And that that detainee is not suffering a  
7 serious health complication; correct?

8 A Correct.

9 Q And to make sure if that detainee requires  
10 medical assistance, that detainee gets it; correct?

11 A I'm not going to answer that particular  
12 question with the way you want it answered.

13 Q Okay. So you answer it your way.

14 A There may be somebody in a cell with a  
15 camera that does not have significant medical needs,  
16 so it's the only way -- way I can answer that  
17 question. None of the cells upstairs have cameras.

18 Q Sure. But -- but in the instance where  
19 you have a detainee who has been examined by medical  
20 and then determined that it's necessary, in their  
21 opinion, that for safety reasons, they need to be  
22 put into detox 115 for medical observation, the  
23 purpose is to make sure that that detainee's medical  
24 condition is monitored; correct?

25 A Correct.

1 MR. ARTUS: Objection.

2 Q (By Mr. Howe) And it's also there to make  
3 sure that that medical condition doesn't worsen;  
4 correct?

5 A Correct.

6 Q Because when a -- when somebody's medical  
7 condition worsens, that becomes a threat to their  
8 health; correct?

9 A Correct.

10 Q And their safety; correct?

11 A Correct.

12 Q And a detainee does not have the ability  
13 on their own to dial 911, do they?

14 A You're right.

15 Q As a matter of fact, the reason why  
16 they're in that unit is because if 911 needs to be  
17 called, that it's actually called; correct?

18 A There are inmates in that area that --  
19 that's not a 911 unit, I don't know why -- I don't  
20 know what --

21 Q I'm talking about detox 115 only, I'm not  
22 talking about the rest of the area.

23 MR. ARTUS: Lowell, you got to let him  
24 answer the question.

25 Q (By Mr. Howe) Go ahead, sir, I just don't



1 resolution is to that, I don't recall that.

2 Q That's fair enough. The purpose of that  
3 is for transparency, though; correct? What I mean  
4 by that it's, one, to protect the facility if  
5 allegations are made against the facility; correct?

6 A Correct.

7 Q But it's also to protect the detainee, so  
8 that if something happens, we can always go to the  
9 tape and find out what happened; correct?

10 A Correct.

11 Q But that -- the control of that recording  
12 system is not -- I'll rephrase the question. The  
13 detainee does not have the ability to preserve that  
14 recording footage, do they?

15 A That's correct.

16 Q As a matter of fact, that's within the  
17 jail facility's --

18 A That's correct.

19 Q -- control? We talk about cell checks,  
20 you know what a cell check is; correct?

21 A Correct.

22 Q Okay. Cell checks, how often do cell  
23 checks happen in the facility or are they supposed  
24 to?

25 A Every hour or less than the hour.

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1 Q When the cell checks are done, is that  
2 usually done by what we call the detention officers?

3 A Correct.

4 Q Those are -- the duties of detention  
5 officers, would you say that they're, one, to bring  
6 food trays to detainees; correct?

7 A Correct.

8 Q Two, to do cell checks?

9 A Correct.

10 Q Three, to make sure that if a detainee  
11 requests to be put on sick call and is unable to  
12 access the kiosk, to make sure that's taken care of;  
13 correct?

14 A You're talking about your -- your --

15 Q Your detention officers.

16 A Yes, that's correct.

17 Q They're also there to provide security to  
18 Turn Key staff when they're treating the detainee  
19 patients; correct?

20 A Correct.

21 Q They're also there to make sure the  
22 detainees are -- are moved around in a -- a safe  
23 manner during their period of confinement throughout  
24 the facility; correct?

25 A Correct.

1           Q     In the facility during this relevant  
2     period when a detention officer, we'll call them  
3     facility staff, while they were performing cell  
4     checks, was there a form that they would have to  
5     sign saying when they performed the cell check and  
6     who performed the cell check?

7           A     They -- they didn't sign it, the tower  
8     operator signed it, once they knew that was done,  
9     that cell check was done.

10          Q     But when the tower operator signs it, it's  
11     not -- there's a report that says that an entire  
12     cell check was completed; correct?

13          A     Correct.

14          Q     But it's not something that to where the  
15     tower operator is going through and every time the  
16     detention officer goes through, puts a check down  
17     saying, okay, you got in pod 1, room number 2, room  
18     number 3, room number 4, they're not monitoring  
19     them; correct?

20          A     Who's not monitoring who?

21          Q     I'm saying the -- the person in the tower,  
22     the tower operator, they're not just sitting there  
23     watching and making sure that the detention officer  
24     is doing the cell checks like they're supposed to?

25          A     Yes, they are.

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1 Q They are? And they're keeping a note?

2 A There's a log.

3 Q There's a log, but the log is not a  
4 detailed log to where it just says each individual  
5 pod, it just says that the cell check was completed  
6 in that pod or that entire section; correct?

7 A We have a little bit of a difficulty,  
8 we're communicating on these pods.

9 Q That's okay.

10 A You have five ponds on either end, there's  
11 two tower operators and they watch the person go  
12 through each pod or both, because there's two people  
13 who go through, they watch those people go through  
14 each pod and they log off that they've done their  
15 sight checks.

16 Q In order to do -- so if I use the term  
17 "cell check," is that the same as sight check?

18 A Yes.

19 Q Okay.

20 THE VIDEOGRAPHER: Need to change media.  
21 End of Media Number 1 at 4:26 p.m.

22 (Break taken from 4:26 to 4:36)

23 THE VIDEOGRAPHER: We are back on the  
24 record, Media Number 2 at 4:36 p.m.

25 Q (By Mr. Howe) Mr. Bickel, when we had

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1 that's fine, it may go faster this way, so that's  
2 fine.

3 MR. HOWE: Well, he's --

4 MR. ARTUS: That's fine.

5 MR. HOWE: -- an adverse witness, I can  
6 ask you leading questions the whole time if I want,  
7 sometimes I wish I could, I'm just finding out some  
8 additional information.

9 Q (By Mr. Howe) So isn't it true that it's  
10 against the facility policy to leave an inmate  
11 laying in his own urine?

12 A Correct.

13 Q Leave an inmate laying in his own feces?

14 A Correct.

15 Q Fail to perform a proper cell check?

16 A Correct.

17 Q Also, you would agree with me that  
18 according to the policy and the handbook, that there  
19 are certain hygiene standards the detainees are to  
20 follow; correct?

21 A Correct.

22 Q And certain sanitary standards that a  
23 detainee is required to follow; correct?

24 A Yes.

25 Q You would also agree with me that

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1 detainees that require a specialized -- that are  
2 unable to perform daily life functions on their own,  
3 that the facility is responsible for assisting those  
4 detainees and performing those functions; correct?

5 A Correct.

6 Q And those functions, you would agree with  
7 me, are ability to access the toilet that's in their  
8 cell; correct?

9 A Yes.

10 Q The ability to clean themselves off;  
11 correct?

12 A Correct.

13 Q The ability to bathe?

14 A Correct.

15 Q The ability to get their food tray?

16 A Correct.

17 Q The ability to change their clothes?

18 A Correct.

19 Q The ability to take their medicine?

20 A Yes.

21 Q Correct? And in a case where a detainee  
22 is unable to do those things, those daily life  
23 functions that we just discussed and the facility  
24 does not assist them in performing those duties,  
25 that is against the jail policy; correct?

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1 A Correct.

2 Q When the facility staff is performing  
3 their sight checks, and I just want to take you just  
4 to detox 115, you stated that it has to be a -- a  
5 cell check is a sight check, which means they  
6 actually need to see what's going on in that cell;  
7 correct?

8 A Correct.

9 Q And when they're looking in that cell, you  
10 would agree with me that they, by looking in that  
11 cell, can observe a detainee; correct?

12 A Yes.

13 Q You would agree with me that if a facility  
14 staff member looked in a cell and saw that a  
15 detainee had urinated in his cell, not using the  
16 toilet, that that could be considered misconduct;  
17 correct?

18 A Correct.

19 Q Also, in that same situation, if a  
20 detainee had not only urinated in his cell, but also  
21 had defecated in his cell, that that would also be  
22 even a greater example of misconduct; right?

23 A Correct.

24 Q Because detainees are expected to use the  
25 toilet when they go to the rest room; correct?

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1 A No.

2 Q And there's also -- as far as the  
3 ventilation system, is there a ventilation system?

4 A Yes.

5 Q But that would just blow cool air in;  
6 correct?

7 A Cool or warm, yes.

8 Q Okay. But when a detainee defecates on  
9 himself or is soaked in urine, when a -- as a  
10 detention officer, they would be able to smell that  
11 and know that something has occurred; correct?

12 A Correct.

13 Q Or they should be able to see that;  
14 correct?

15 A Yes.

16 Q And you would expect that when that  
17 happens, that officer would notify either medical  
18 staff that there's an issue; correct?

19 A Yes.

20 Q But you would also want them in that case  
21 to notify the -- the administration; correct?

22 A Yes.

23 Q Because that is an issue that definitely  
24 needs to be dealt with; correct?

25 A Correct.



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1 who is suffering from back pain --

2 A If I were to have one?

3 Q Yes.

4 A Okay.

5 Q Back pain, numbness in their feet, and the  
6 ability to walk, they're suffering from an inability  
7 to walk?

8 A Okay.

9 Q And stand on their own.

10 A Okay.

11 Q And use their legs. And then medical  
12 staff in that situation assigns that detainee to  
13 detox 115 --

14 A Okay.

15 Q -- for their safety, while they are in  
16 that unit or that cell, they are to be observed, and  
17 you're supposed to have eyes on them; correct?

18 A Correct.

19 MS. THOMPSON: Object to form.

20 Q (By Mr. Howe) Is it against policy to  
21 deny a detainee's access to sick call?

22 A Yes.

23 Q Is it against policy to deny prescribed  
24 medication prior to their being confined at the  
25 facility when family members or somebody's trying to

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1 deliver it to the lobby window?

2 A It would have to be approved by medical.

3 Q Okay. But it's against policy just to  
4 refuse it; correct? If they follow the procedure,  
5 it's properly in the prescription bottle, it's the  
6 only medication and it states it, the policy for the  
7 jail is that the way that you receive detainee's  
8 prescriptions for preexisting medical conditions is  
9 that somebody can bring that to the lobby window and  
10 then it can be received?

11 A If it's approved by medical.

12 Q Okay. Approved by medical. So what  
13 you're saying, though, is when medical approves it,  
14 that the medication should be accepted?

15 A Correct.

16 Q But you would agree with me that medical  
17 doesn't -- it would be against policy for medical to  
18 refuse to accept medication if there's a medication  
19 that's necessary that a patient take that was  
20 prescribed?

21 MS. THOMPSON: Lowell, are you saying  
22 against Turn Key policy or jail policy?

23 Q (By Mr. Howe) Talking about jail policy.  
24 Let me say this, you would agree with me the  
25 medical -- it would be against policy for medical to

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1 deny a medication that a detainee actually needs  
2 when it's presented to the lobby window?

3 A If that medicine has -- is found to be  
4 exactly what the label says and it has been  
5 prescribed by that doctor to do that, you're --  
6 you're in a jail facility, you have people trying to  
7 bring things that are -- that are not their  
8 medication.

9 Q Generally, do people try to bring in  
10 Casodex, a cancer medication, for somebody that  
11 doesn't have cancer? Do they?

12 A What's your question?

13 Q That's my question.

14 A I don't understand your question.

15 Q Casodex is a cancer medication.

16 A Well, see, how do I know that?

17 Q That's why -- so let me clarify that.  
18 Casodex is a cancer medication.

19 MS. THOMPSON: Object. Lowell is  
20 testifying.

21 Q (By Mr. Howe) Well, if Casodex is a  
22 cancer medication --

23 A If it is.

24 Q If it is, and you have a detainee that's  
25 confined in your facility --

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1 one, I don't know if the --

2 THE WITNESS: There's not a policy on  
3 that.

4 Q (By Mr. Howe) But is it the practice, is  
5 it the normal habit, practice, or routine --

6 A No. To somebody that doesn't need a  
7 wheelchair? No. How asinine is that question?

8 MR. ARTUS: Let's take a break.

9 THE VIDEOGRAPHER: Off the record.

10 (Break taken from 5:10 to 5:15)

11 THE VIDEOGRAPHER: We are back on the  
12 record.

13 Q (By Mr. Howe) Mr. Bickel, it's against  
14 policy to deny a detainee experiencing a medical  
15 emergency transportation to the hospital; correct?

16 A Correct.

17 Q It's against policy to have inadequate  
18 detainee medical chart records keeping; correct?  
19 What I'm saying is you would agree with me that the  
20 policy of the Muskogee County Jail, in making sure  
21 the detainee's medical -- that they're receiving  
22 adequate medical care, that that requires accurate  
23 chart keeping records; correct?

24 A Correct.

25 Q It's against policy to use lockdown as a

1 form of punishment for somebody seeking medical  
2 attention; correct?

3 A Correct.

4 Q It's against policy to put a detainee in  
5 detox 115 because it's thought by medical staff that  
6 he's faking his condition; correct?

7 MS. THOMPSON: Object to form.

8 MR. ARTUS: Object to the form.

9 THE WITNESS: Correct.

10 Q (By Mr. Howe) It's also against policy to  
11 put a detainee in detox 115 because the facility  
12 staff thinks he's faking his condition; correct?

13 A Correct.

14 MS. THOMPSON: Object to form.

15 Q (By Mr. Howe) It's against policy for the  
16 facility to preserve evidence as to what took place  
17 while a detainee is confined?

18 MR. ARTUS: You're saying it's against  
19 policy to preserve evidence?

20 MR. HOWE: No, it's against -- to fail to  
21 preserve evidence.

22 Q (By Mr. Howe) Excuse me, I'll rephrase  
23 the question. It's against policy -- I need to --  
24 there we go -- for the facility to fail to preserve  
25 evidence; correct? Evidence related to a court

1           A       The only thing I can say to you is there's  
2       no way to sign the form.

3           Q       Okay. And how long have you been aware of  
4       this, while you were the -- while you were the  
5       administrator, how long were you aware that these  
6       forms were --

7           A       OTIS has been the same booking process  
8       ever since I can remember.

9           Q       Okay. So at least during the time that  
10      you were the jail administrator there?

11          A       At least.

12          Q       Previously Jeremy Garvin, without going  
13      into supervision, direction and training, he had  
14      previously testified in his deposition about what  
15      the policies and procedures were for training,  
16      supervising and directing employees, would you be  
17      willing to adopt and rely on what he said as being  
18      the procedures or would you like for me to inquire  
19      and ask you? Do you believe he -- he would know  
20      what the policies and procedures are? How about  
21      this, why don't I just ask you a couple questions?

22          A       Okay.

23          Q       For training, when staff is hired as a  
24      detention officer, what training is provided to that  
25      employee to perform their duties?

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1           A       Jeremy always put them through a little  
2     mini training, he assigned them to a shift with a  
3     training person, and then shortly thereafter, they  
4     went through jail school required by the State of  
5     Oklahoma.

6           Q       Do you know what the mini training session  
7     was, have you ever personally observed it?

8           A       No.

9           Q       Have you ever actually been the one that  
10    provided that instruction?

11          A       Not for that, no.

12          Q       As far as supervising facility staff, what  
13    would you say are the measures that the facility  
14    took to make sure that employees were doing the jobs  
15    they were supposed to do?

16          A       When?

17          Q       During this relevant period. Basically  
18    what I'm saying is, how do we know that the  
19    employees were doing what they said they were doing?

20          A       Well, you've got supervisors on every  
21    shift.

22          Q       Okay. So you would leave that up to the  
23    supervisors; correct?

24          A       Correct.

25          Q       You would agree with me that the

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1 A No.

2 Q Do you recall whether Jeremy had a  
3 discussion with you about Sheriff Pearson asking why  
4 my client, Michael Smith, was not taken to the  
5 hospital?

6 A No.

7 MR. HOWE: Pass the witness.

8 CROSS-EXAMINATION

9 BY MR. ARTUS:

10 Q When did you leave your employment with  
11 the jail or as jail supervisor for Muskogee County?

12 A About June, and I guess it was '16, 2016,  
13 about June, somewhere in there.

14 Q Okay. 2016. So you may not have even  
15 been administrator when the notice of tort claim  
16 came in?

17 A Correct.

18 Q Okay. With regard to the pertinent time  
19 in question, which is March 15th, 2016, to April  
20 2nd, 2016, Turn Key had the contract to provide  
21 medical care; correct?

22 A Correct.

23 Q And they are the medical professionals;  
24 correct?

25 A Correct.



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1 Q So you're going to follow what they say to  
2 do with regard to transporting inmates to the  
3 hospital; correct?

4 A Correct.

5 MR. HOWE: Objection. I'm just going to  
6 enter a standing objection to leading questions  
7 during this examination.

8 Q (By Mr. Artus) And when you --

9 MR. HOWE: Hold on. For purpose of the  
10 record, during the examination by Mr. Artus.

11 Q (By Mr. Artus) Would you refer to Turn  
12 Key on how to treat someone with Stage IV cancer?

13 A Yes.

14 Q Would you rely on Turn Key and their staff  
15 to determine if an inmate has a serious medical  
16 condition?

17 A Yes.

18 Q Are you aware of any Skyping that was done  
19 in the jail?

20 A No.

21 Q While you were there?

22 A No.

23 Q Do you have any reason to believe that  
24 Nurse Smith ever missed his assigned clinics?

25 A No.

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1           Q     Okay. In your experience with being a  
2     jail administrator for how many years at Cherokee  
3     County?

4           A     Ten.

5           Q     And how many years at Muskogee?

6           A     Seven.

7           Q     Do inmates often request to go to the  
8     hospital when -- when nothing is wrong with them?

9           A     They do.

10          Q     And in -- when that -- when an inmate  
11     and -- and jailers receive first aid training;  
12     correct?

13          A     Correct.

14          Q     But when an inmate requests medical,  
15     whether you believe they're lying or wanting to get  
16     out or not, the policy is to send them to medical;  
17     right?

18          A     Correct.

19          Q     And then medical makes the decision to  
20     find out whether or not they need to go; right?

21          A     Correct.

22          Q     So, because inmates all -- all the time  
23     ask to go to medical, the policy is to send -- I  
24     mean, they request to go to the hospital, right, all  
25     the time; correct?

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1 A Correct.

2 Q So policy is to send them to medical and  
3 let them figure out if they really need to go or  
4 not; right?

5 A That's correct.

6 Q And we hired Turn Key, you hired Turn Key  
7 to make those decisions?

8 A Correct.

9 Q Because they have the training to do that;  
10 is that right?

11 A Correct.

12 Q And then you do what they tell you to do  
13 as far as that goes?

14 A Correct.

15 Q I mean, you have the authority to say no  
16 and override them, but most of the time you're going  
17 to do what they say, aren't you?

18 A Yes.

19 MR. ARTUS: That's all I have. I pass the  
20 witness.

21 CROSS-EXAMINATION

22 BY MS. THOMPSON:

23 Q Mr. Bickel, I just have a few follow-up  
24 questions. First, just to clarify the layout of the  
25 detox area, how many total pods are down there?